1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

they had to live apart on the outskirts of the village. The social sentiment was there. A norm making a crime of parricide could have developed from it. But as it was, it remained not a matter for "legal" interference by society. Therefore murder was still essentially a wrong and only vaguely a crime.

In case 27, p. 94–95, a young warrior slew his mother's brother because of black magic performed against his brother. The uncle was said to be putting a curse upon the youth for suspected adultery with the uncle's wife. Here were two intra-familial actions: the first, for a violation of marital rights; the second, a retaliation before the fact in anticipation of the death. In the words of the informant, however, "The quarrel was in the family, so no one else could take it up to do anything about it." This case sharply defies the supposed principle of inability of blood to proceed against blood. At the same time it resubstantiates the private nature of murder.

Supporting and contradicting the hypothesis that action could not be taken against an aggressor within the family, is a second case of parricide in which Capture killed his father, who was a "captive white man who had grown from boyhood among the Comanches." His father had remarried after his first wife's death. The new wife was young and beautiful—and indiscreet. She took her step-son as a lover. When his father got suspicious, Capture shot him to get him out of the way. Then he fled. His flight, however, led him into the vicinity of That's It's camp. That's It was a foster relative of the dead man—through his adoption into That's It's family. That's It called him "younger brother." That's It took a party of his kinsmen to confront the murderer. "Son," he said, "for one thing I have come. It is as it is—it is done (the deed). I am taking the woman and the horses." Then the informant explained, "That's It took the horses and the woman, not as a form of damages, because Capture was his 'son': you don't collect damages from a son. He did it as a punishment, because the woman meant more to the boy than anything else."

Taking a group of kinsmen over to divest an erring relative of his ill-gotten wife and horses was not collecting damages; it was punishing him! It had to be so, because one did not collect damages from a son. Is legal logic restricted to the civilized mind? One could not proceed against a kinsman, but one could punish him.

The truth seems to be that the "principle" itself rests on confusion. Where families or kin are the legal units recognized by the society as a whole, then *before the society as a whole or its officials* it may well be that "a group cannot proceed against itself." But there remains the self-regulation of the group. The Comanche instances show two things: that what happened

to push the process to its conclusion, or nothing would be done at all to provide relief or redress. 671

Nevertheless, a system of law it was. It was absolutely sure that certain forms of wrongs would be prosecuted. There were proper procedural patterns to be followed in the prosecution of a case. There were quite specifically understood sanctions to be applied to the different categories of offenses. And if the defendant was adamant beyond the point of reasonableness, he was, after due process, subject to a violent attack upon his person.

The essence of law, whatever specific forms it may take from one social system to another, comprises regularity, force, and official authority. Comanche law-ways had all those essential attributes.

"Dot" Babb's statement that on the whole there was little infringement on the rights of others among the Comanches, that they did not fight, quarrel, and commit murder as did the white man,[11] is contrary to the facts as we know them. The Comanches were most litigious, not, it is true, from any love of going to law for the savor of it, but because they were extreme individualists given to crowding each other in the unceasing struggle to outrank each other in personal prestige. A man could climb the social ladder by piling up a war record at the expense of enemies, and this was the legitimate way. But he could also reach toward his goal by aggressively challenging the status of a rival through stealing his wife, or seducing her, or taking his horse. This was the illegitimate way. It was illegal, but it was also customary enough. Forty-five cases of old-time legal actions arising from adultery and wife stealing alone were recorded from Comanche informants by one of the authors in his study of Comanche law-ways. Of these, twenty-two were wife-absconding cases and twenty-three were cases of simple adultery. 684 577 674

If the Comanches were lawless, it was not through an absence of law, but rather because of a reckless tendency to break the law in the face of certain and severe penalties. Seven of the forty-five erring wives paid the death penalty: four for running off with another man, three for committing adultery. Of the remaining twenty adulteresses, five were mutilated by their husbands: four had the tips of their noses cut off and one had the soles of her feet slashed so that she could not 684

[11] Babb, *op. cit.*, 102–104.

Government and Law

Among settled peoples with fixed property and diversified economics, the institution of land tenure, the disposition and inheritance of property, the treatment of chattels, and the obligations of contract form the most important aspects of civil law. Yet among the Comanches these had almost no significance. The Comanches had no concept of land value. As herding hunters, land was a matter of unconcern for them, being held neither individually, jointly, nor communally. One may speak of their country as being merely communally occupied. There are no records of any disputes between the bands over hunting grounds. The external boundaries of the Comanchería were not firmly fixed, but vaguely felt. Allies and friends were welcome to hunt and visit, but other outsiders entered on peril of their lives.

Wealth for the Comanches centered largely in horses, as has already been shown; horses were individually owned by both men and women. They were acceptable as a medium of exchange and could be used as payment of obligations in damage suits. Women, too, might be listed in the category of chattel property—first of father and brother and later of husband. Dogs must also be included under the heading of private property. They abounded, but after the acquisition of the horse had little economic value or importance save as camp scavengers and sentries. The idea of liability for the acts of animals did not exist. There was no recompense for a dog bite; nor could damages be collected for injuries received from a kicking horse.

The Comanches owned a number of captives who were chattel property until adopted as brothers by their owners if they were boys or married by their captors if they were girls. There were a few personal slaves held by blood covenant by individual warriors. They were generally captives, Mexicans forming the bulk of the number. A blood ceremony, according to Josiah Gregg, was performed with blood taken from a vein on the back of the captive's hand or arm. The ceremony was repeated whenever ownership of the slave changed. The slave had the right of life, food, and protection, since no one dared molest the property of another, and the owner could sell or transfer him at any time to whomever he chose.[25] There are indications that the Comanches captured and sold slaves merely as articles

[25] Gregg, *op. cit.*, 434.

The Comanches

848 Many forms of social conduct which are considered Abnormal in
our own society were not considered criminal by the Comanches. Their attitudes toward illegitimacy, which seems to have been rare, show no vindictiveness, although the feeling prevailed that every child should have a recognized father.

Premarital sex relations were common, but in case a child was born as a result, the father usually married the mother. The father could claim the child at any time.

835 Incest, which consisted of sexual relations between two persons within three degrees of relationship, was tabu, but there was no legal control. The few men who were known to have committed incest were called *posa*, "crazy." Beyond this, there was only informal ostracism—and more sneering references. Thus, when Pointing to the Rising Sun married his sister's beautiful daughter, Wide Feet, his own sister refused to address him as *monapo*, "son-in-law," which would have been the respectful and proper thing to do, had it been a proper marriage. The People did not let it pass, however; they made it a point always to refer to him, her elder brother, as her son-in-law.

The Comanches actually had strong feelings against incest—brother-sister avoidance was enjoined on this basis—but they felt no need to impose strong sanctions against it. Most men were too concerned with the maintenance of their personal prestige to mar it with such an act. And perhaps more important is the fact that Comanche supernaturals were in no sense projected images of a rewarding and punishing father. Incest was not a sin against the gods any more than it was a crime. There was no need to punish the offender in order to protect the community from supernatural wrath. The act remained an offense against good taste, nothing more.

839 Rape, except upon captives, occurred infrequently and was not part of the general pattern. Sleep-crawling by either boy or girl was legitimate if the recipient did not object to quiet night visits. But before the advent of the white race's demoralizing influence, Comanche women rated high in chastity.

674 Theft was so unusual that no provision was made for it in the
577 legal scheme. Consequently, it must fall into the vague class of unapproved, abnormal acts which were outside the scope of the law. Generosity was so highly valued that he who had need of something had only to indicate his desire, and he would receive it as a gift.